

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of:
The Zayo Group, LLC, Application for Assignment of License of 42 Microwave Licenses from Eagle-Net Alliance;
and
The Zayo Group, LLC, Request for Waiver of Section 1.917(a) of the Commission's Rules.
File No. 0008846678
(WQQQ378, WQQQ379, WQQQ380, WQQQ386, WQQQ387, WQTM245, WQTM246, WQZR652, WQZR655, WQZR659), (WQQP831, WQQP837, WQQP873, WQQQ494, WQQQ599, WQQQ617, WQQQ623, WQQU349, WQQU366, WQQU368, WQQU386, WQQU792, WQQV478, WQQV486, WQQV878, WQQV879, WQQX393, WQQX400, WQQX402, WQQX408, WQQX411, WQRB772, WQRB775, WQRE203, WQRE446, WQRE460, WQRH806, WQRH807, WQTQ323, WQUI797, WQUI800, and WQUN945)

ORDER

Adopted: January 3, 2020

Released: January 3, 2020

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. On October, 25, 2019, the Zayo Group, LLC (Zayo) filed an application requesting the approval of the assignment of 10 microwave licenses from Eagle-Net Alliance (Eagle-Net) to Zayo. On December 19, 2019, Zayo amended its application, seeking Commission approval of the assignment of an additional 32 microwave licenses from Eagle-Net to Zayo, increasing the number of microwave licenses to be assigned to 42. As with its initial application, Zayo requests a waiver of section 1.917(a) of the Commission's rules governing who may sign applications so that it may sign the amended application on behalf of the assignor, Eagle-Net. Zayo also requests that the Commission approve the Eagle-Net-to-Zayo assignment effective nunc pro tunc to May 2, 2018. For the reasons set forth below, we grant the

1 Application for Commission Approval of Assignment of License from Eagle-Net Alliance to The Zayo Group, LLC, FCC File No. 0008846678, filed Oct. 25, 2019 (Inactive) (Eagle-Net-to-Zayo Application).

2 Application for Commission Approval of Assignment of License from Eagle-Net Alliance to The Zayo Group, LLC, FCC File No. 0008846678, filed October 25, 2019, as amended Dec. 19, 2019 (Pending) (Eagle-Net-to-Zayo Amendment).

3 47 CFR 1.917(a).

4 Zayo sought identical waiver relief when it filed the Zayo-Eagle-Net Application on October 25, 2019. See Description of Transaction, Public Interest Statement and Request for Waiver attached to Eagle-Net-to-Zayo Application (Zayo Waiver Request) at 1.

5 Zayo took ownership of the above-captioned microwave licenses from Eagle-Net on May 2, 2018. Id.

waiver request, deny the request for *nunc pro tunc* treatment of the assignment application, and direct processing of the assignment application.

II. BACKGROUND

2. In 2011, Eagle-Net received a funding grant from the National Telecommunications and Information Agency (NTIA) to construct a broadband network to provide service to certain rural Colorado communities.⁶ In connection with that grant, Eagle-Net applied for and received the captioned microwave licenses and constructed the licensed facilities.

3. Zayo represents that Eagle-Net could not sustain its broadband network financially and that NTIA therefore requested Zayo—one of Eagle-Net’s partners in the broadband network—to assume management of Eagle-Net’s facilities.⁷ It did so, and on June 5, 2017, an insolvent Eagle-Net was dissolved.⁸ On May 2, 2018, again at NTIA’s request, Zayo took ownership of certain Eagle-Net assets including the captioned microwave licenses.⁹ Zayo, however, failed to file an application for assignment of the microwave licenses from Eagle-Net to Zayo, something that Zayo contends was “[d]ue to an administrative oversight.”¹⁰ Zayo now seeks to amend its application to include the additional 32 licenses.

4. Zayo has been operating all 42 microwave facilities without Commission authorization since May 2, 2018. In the statement accompanying the Zayo-Eagle-Net Application and in the statement accompanying the Zayo-Eagle-Net Amendment, Zayo seeks retroactive assignment of the microwave licenses from Eagle-Net to Zayo *nunc pro tunc* to May 2, 2018, the date it assumed ownership of Eagle-Net’s assets.¹¹

5. According to Zayo, despite its diligence, it has been unable to locate an official of Eagle-Net to execute the assignment applications as assignor. It therefore requests waiver of section 1.917(a) of the Commission’s rules¹² so that it may execute the amended assignment application on behalf of Eagle-Net.¹³

⁶ See NTIA Broadband Technologies Improvement Program (BTOP) Award No. NT11BIX5570001.

⁷ Zayo Waiver Request at 1 (“In July 2015, Eagle-Net asked Zayo Group (one of its network partners) to assume management of its network. Three years later at the behest of NTIA and in order to prevent the imminent disruption of service caused by Eagle Net’s insolvency and dissolution (on June 5, 2017), Zayo Group agreed to assume ownership of certain Eagle-Net assets on an expedited basis, including the FCC licenses referenced herein.”)

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Zayo requests “a waiver of Section 1.948(a) of the Commission’s rules to the extent deemed necessary to authorize the assignment of these licenses.” Zayo Request at 1. Section 1.948(a) states “Except as provided in this section, authorizations in the Wireless Radio Services may be assigned by the licensee to another party, voluntarily or involuntarily, directly or indirectly, or the control of a licensee holding such authorizations may be transferred, only upon application to and approval by the Commission.” (Emphasis supplied.) We do not find a waiver of Section 1.948(a) “necessary to authorize the assignment of these licenses” inasmuch as Zayo has complied with section 1.948(a) by filing the assignment application which we approve in the instant *Order*.

¹² 47 CFR § 1.917(a).

¹³ *Id.* at 3. 47 CFR § 1.917(a) requires that applications be executed by the applicant, if the applicant is an individual; by a partner if the applicant is a partnership; by an officer, director, or duly authorized employee, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; or by the trustee if the applicant is an amateur radio service club. Zayo in this instance does not fall in any of the above categories.

III. DISCUSSION

6. Zayo's contention that its failure to file a timely assignment application was due to an inadvertent administrative error is unpersuasive. Zayo, which represents itself as an "established FCC licensee"¹⁴ is charged with knowledge of the Commission's rules.¹⁵ There is no dispute that Zayo operated the Eagle-Net facilities without Commission authorization for an extended period, repeatedly violating section 1.948 of the Commission's rules¹⁶ and section 310(d) of the Communications Act of 1934, as amended.¹⁷ Its claim of administrative inadvertence, like similar claims advanced by others for failure to file required documents, has been uniformly rejected by the Commission as a defensible reason for not complying with Commission rules.¹⁸ Were we to grant Zayo's request to make our approval of the assignment application retroactive to May 2, 2018, we would effectively insulate Zayo from responsibility for its long-term unauthorized operation of the microwave facilities. Our precedent establishing that "administrative oversight" does not excuse rule violations, and the fact that Zayo represents itself to be an experienced Commission licensee, combine to require denial of Zayo's proposal.

7. We note, however, that it has not been the Commission's practice, generally, to deny or dismiss otherwise conforming untimely assignment applications. Instead, the Commission typically has granted such applications but reserved its right to initiate enforcement action.¹⁹ We believe that to be the appropriate approach here and, accordingly, (a) refer the matter of Zayo's unauthorized transfer and operation of the captioned microwave facilities to the Commission's Enforcement Bureau, and (b) instruct staff to state on the resulting license that grant thereof is without prejudice to whatever action the Enforcement Bureau may take.

8. When an assignor has ceased to exist—as is the case with Eagle-Net—the Commission has waived the assignor's signature on an assignment application.²⁰ Here Zayo, as a former partner with Eagle-Net in the broadband project, would have been authorized to execute the assignment application had it been timely. Consistent with the Commission's waiver standard, Zayo has shown that "the

¹⁴ Zayo Waiver Request at 3.

¹⁵ See 47 CFR § 0.406; See also *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7439 (2004) (a Commission licensee is charged with knowledge of the full range of its obligations);

¹⁶ 47 CFR § 1.948.

¹⁷ 47 U.S.C. § 310(d).

¹⁸ See, e.g., *Empire Broadcasting*, Memorandum Opinion and Order, 25 FCC 2d 68, 69 (1970) (mere oversight or failure to be aware of the Commission's requirements will not excuse licensee from its obligation to operate in compliance with the Commission's Rules); *Shared Data Networks*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18187 (EB 2005) (earth station licensee's lack of awareness of its responsibilities is not a mitigating factor warranting a downward adjustment in a proposed forfeiture amount). See also, *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations"); *Anderson Communications*, Memorandum Opinion and Order, 16 FCC Rcd 15020, 15021 para. 5 (2001) ("[w]e do not believe that an inadvertent failure to renew a license in a timely manner is so unique or unusual to warrant a waiver of the rules.").

¹⁹ See, e.g., FCC File No. 0007736579 (Assignment of licenses, call signs WQKB390 and WQUU211, from Cascadelink, Inc. to Astound Broadband, LLC). There, the parties' request for *nunc pro tunc* treatment was denied and the assignment application granted with the notation that the grant, "does not preclude or prejudice any enforcement action related to the unauthorized assignment of authorization.").

²⁰ Cf. *Applications for Consent to Assignment of Private Land Mobile Radio Authorizations from Lotus Development Corp.*, et al. to *IBM Research and Development Corp.*, Order, 16 FCC Rcd 5209, 5210 para. 6 (WTB 2001). ("A waiver of the signature requirement is warranted as to the captioned applications to assign the three Sequent

applicant has no reasonable alternative²¹ for execution of the application. Accordingly, we waive the assignor's signature on the application form and—as Zayo has requested—consent to Zayo's signing the assignment application, Form 603, in the space provided for an assignor's signature.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the application for assignment of license, as amended, filed by the Zayo Group, LLC, File No. 0008846678, seeking Commission consent to assign 42 microwave radio station licenses from Eagle-Net Alliance to The Zayo Group, LLC IS GRANTED.

10. **IT IS FURTHER ORDERED**, that the Licensing Branch of the Policy and Licensing Division of the Public Safety and Homeland Security Bureau SHALL PROCESS the application for assignment of license, File No. 0008846678 filed by The Zayo Group, LLC, as amended December 19, 2019, and SHALL CONDITION grant of said application as being without prejudice to such action as the Commission's Enforcement Bureau may take for The Zayo Group, LLC's unauthorized transfer and operation of the stations being assigned.

11. **IT IS FURTHER ORDERED** that the request for waiver of section 1.917(a) of the Commission's rules,²² accompanying the application for assignment of license filed by The Zayo Group, LLC, as amended December 19, 2019, **IS GRANTED** and that The Zayo Group, LLC, IS AUTHORIZED, on behalf of the assignor, to execute the application, as amended, File No. 008846678, for Commission consent to the assignment of license from Eagle-Net Alliance to The Zayo Group .

12. **IT IS FURTHER ORDERED** that The Zayo Group, LLC's unauthorized transfer and operation of the microwave stations listed in the caption of this *Order* is, hereby, referred to the Enforcement Bureau of the Federal Communications Commission.

13. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

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licenses. We find that IBM has demonstrated that it lacks a reasonable alternative to providing the signature, on Form 1046, of a former Sequent employee with direct knowledge of the stations. Given that Sequent fully merged into IBM, *i.e.*, dissolved, there cannot be any directors, officers, or authorized employees of Sequent to sign the assignment applications. Thus, we grant IBM's waiver requests concerning the Sequent assignment applications.”)

²¹ See 47 CFR §1.925(b)(3)(ii). See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972)).

²² 47 CFR § 1.917(a).